Filed 12/15/16 Marriage of Aguina and Kang CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of AGUINA AGUINA and CHOONG-DAE KANG.	
AGUINA AGUINA, Appellant, v. CHOONG-DAE KANG, Respondent.	E063571 (Super.Ct.No. SWD015783) O P I N I O N

APPEAL from the Superior Court of Riverside County. James T. Warren, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Westover Law Group and Andrew L. Westover for Appellant.

Law Offices of John M. Siciliano and John M. Siciliano for Respondent.

I. INTRODUCTION

Appellant Aguina Aguina (Husband) appeals from a March 23, 2015 "status only" judgment terminating his marriage to respondent Choong-Dae Kang (Wife). The judgment does not adjudicate any other issues, including property or support issues.

Husband claims the judgment is "void" and must be set aside because the court issued the judgment following a February 6, 2015 trial (1) without requiring Wife to file and serve a noticed motion to bifurcate the marital dissolution issue from the other issues to be adjudicated (Fam. Code, § 2337, subd. (a)),[1] and (2) without "considering" whether any of the "conditions" listed in section 2337, subdivision (c) should have been imposed on Wife for Husband's benefit or protection, pending the issuance of a judgment adjudicating all remaining property and support issues between the parties.

We conclude the court properly ordered the marriage dissolved without requiring Wife to file and serve a noticed motion to bifurcate the marital status issue from the other issues to be tried, pursuant to section 2337, subdivision (a). The trial was not supposed to be a bifurcated trial. It ended up being a trial solely on the status issue because Husband appeared at trial unprepared to proceed on any issues, despite having had ample time to prepare and having several attorneys since he filed his petition in September 2008.

Husband has also failed to demonstrate reversible error based on the court's failure to impose any conditions pursuant to section 2337, subdivision (c). Husband never asked

[1] All further statutory references are to the Family Code unless otherwise indicated.

the court to impose any such conditions. Nor does Husband claim he was prejudiced by the court's failure to impose any such conditions. Lastly, the judgment is not void. Accordingly, we affirm the judgment.[2]

II. BACKGROUND

On September 5, 2008, Husband filed a petition to dissolve the marriage. Soon thereafter, the parties entered into a marital settlement agreement, and a judgment of dissolution was entered on November 18, 2008 (the 2008 judgment). On June 8, 2010, the court granted Wife's motion to set aside the 2008 judgment pursuant to Code of Civil Procedure section 473, subdivision (b) (court may relieve party from judgment taken through mistake, inadvertence, surprise, or excusable neglect).

After the 2008 judgment was set aside, the parties engaged in protracted litigation in the family and civil courts concerning their community assets and liabilities, among other issues. (See *In re Marriage of Aguina Aguina and Choong-Dae Kang* (Aug. 14, 2014, E057770) [nonpub. opn.], p. 2.) Since December 2012, no fewer than seven writ petitions or appeals have been filed in the case in this court.

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[2] Wife has moved this court to strike or disregard portions of Husband's opening brief, the appellant's appendix, and the reporter's transcript on appeal, to the extent they pertain to Husband's postjudgment motion filed on June 17, 2015 to vacate the March 23, 2015 status only judgment pursuant to Code of Civil Procedure section 473, subdivision (d). The motion was denied at an August 25, 2015 hearing, and a transcript of the hearing is included in the reporter's transcript. The appendix includes the motion and opposition papers. As Wife points out, the order denying the motion was appealable separately from the March 23, 2015 judgment. (Code Civ. Proc., § 904.1, subd. (a)(2).) But as Husband points out, his appendix was required to contain "[a]ny . . . motion to vacate the judgment." (Cal. Rules of Court, rules 8.122(b)(1)(D).) Accordingly, we deny the motion.

At a trial readiness conference on November 5, 2014, both parties appeared and were represented by counsel. John Bachmayer represented Husband and John M. Siciliano represented Wife. The parties agreed there were no issues to try concerning the custody or visitation of their two minor children, but there were issues to try concerning child and spousal support, attorney fees, and the division of the parties' community assets and debts. The time estimate for trial was three to four days. The court set aside several days in February 2015 for trial, and ordered trial to begin on February 6, 2015. On January 8, 2015, the court granted the motion of Mr. Bachmayer's firm, Brandmeyer, Gilligan & Dockstader, to be relieved as Husband's counsel, after finding there was a "breakdown" of communication between Husband and his counsel.

On February 6, 2015, the first day of trial, Husband appeared in court without counsel and said he was not ready to proceed with trial. Husband claimed witnesses had to be flown in from Japan, Austria, and Hawaii, and there was no way he could proceed to trial on any issues without counsel. Wife appeared, represented by Mr. Siciliano, and was ready to proceed to trial on all issues.

The court denied Husband's request to continue the trial after noting Husband had filed the petition more than six years earlier and had employed at least three attorneys over the life of the case. The court said: "[I]t's not my fault that a conflict [between Husband and his counsel] develops every time we're ready for trial, and so we have to press forward with this case." Mr. Siciliano claimed there were no longer any community assets to divide and asked the court to grant a "non-suit" and dismiss

Husband's petition. The court said it would not be granting a "non-suit" because family law petitions did not work that way and indicated that, at the very least, the court had to issue permanent child and spousal support orders.

Mr. Siciliano also asked the court to "[g]ive these people their . . . status," that is, enter a judgment dissolving the parties' marriage. The court indicated the marriage had been dissolved "a long time ago," but, after reviewing the docket, ascertained that the judge who granted Wife's motion to set aside the 2008 judgment in June 2010 had set aside the *entire* judgment, including the portion dissolving the marriage.

Next, the court asked both parties what they wanted to do "about the dissolution" of their marital status. Mr. Siciliano asked the court to dissolve the marriage effective November 18, 2008, because Wife's motion to set aside the 2008 judgment was only directed at the marital settlement agreement and it was a "mistake" to set aside the portion of the judgment dissolving the marriage.

The court then asked Husband whether he was willing to stipulate to a judgment dissolving the marriage effective November 18, 2008. Husband refused to stipulate to any judgment dissolving the marriage, telling the court "there was never a bifurcation; so . . . we're still married." The court responded: "We're here for trial, and one of the trial issues is status."

In response to the court's questions, Husband confirmed he filed the petition on September 5, 2008, and he had been a resident of the county for at least six months before that date. Husband and Wife agreed that irreconcilable differences had arisen in

the marriage, and Wife confirmed that counseling would not save the marriage and she was asking the court to dissolve the marriage.

The court found it acquired jurisdiction over the subject matter and the parties on September 5, 2008, the date the petition was filed and personally served on Wife. The court ordered the marriage dissolved effective February 6, 2015.

On February 27, 2015, the court issued a tentative decision in which it noted the matter had come on for trial on February 6, 2015, and the court had taken "testimony as to the status and granted an order terminating the marriage and restoring the parties to the status of single individuals on that date." Regarding the issues that were not tried, the court ruled: "Since no witnesses were called, no exhibits or evidence presented, the Court has no alternative except to order that all prior orders remain in full force and effect other than the granting of status entered on February 6, 2015."

On March 18, 2015, the court signed a judgment dissolving the marriage effective February 6, 2015, and the judgment was filed on March 23, 2015. Husband timely appeals from the March 23, 2015 "status only" judgment.

III. DISCUSSION

A. *There Was No Need for Wife to File and Serve a Noticed Motion to Bifurcate the Trial of the Marital Dissolution Issue from the Other Issues*

Husband first claims the judgment is void and must be set aside because Wife did not file and serve a *noticed* motion to bifurcate the matter of dissolving the parties' marriage from the other issues to be tried, as section 2337 requires. We disagree.

Section 2337, subdivision (a), provides that "the court, *upon noticed motion*, may sever and grant *an early and separate trial* on the issue of the dissolution of the status of the marriage apart from other issues." (Italics added.) The trial that began on February 6, 2015, was not supposed to be "an early and separate trial" on the dissolution question, however. Instead, all of the issues remaining in the case were to be tried, and one of those issues turned out to be the dissolution of the parties' marital status.

Additionally, Husband had ample advance notice that the marriage would be ordered dissolved during the trial. Since the time of the trial readiness conference on November 5, 2014, if not earlier, Husband knew or should have known that trial of all of the remaining issues in the case would begin on February 6, 2015. Husband appeared at trial on February 6, 2015, unrepresented by counsel and unprepared to try any issues, even though he had employed at least three attorneys during the more than six-year history of the case. Given Husband's history of conflicts or communication breakdowns with his attorneys and, given the age of the case, the court's January 8, 2015 order relieving Husband's most recent counsel was no excuse for Husband's failure to be prepared to try all issues in the case, with or without counsel, beginning on February 6, 2015.

Following its February 6, 2015 order dissolving the marriage, the court effectively bifurcated the dissolution issue from the other issues to be tried because it had no other choice. On February 10, 2015, the second day of trial, Husband appeared but was still unprepared to try any of the remaining issues. Both Husband and Wife refused to call

any witnesses or present any evidence or argument. As the court put it: "The matter was just submitted to the Court." The court did not dismiss the petition. It left all prior orders in full force and effect.

For all of these reasons, the noticed motion requirement of section 2337, subdivision (a) did not apply to the court's order and judgment dissolving the parties' marital status.[3] Nor was Husband deprived of his procedural due process right to notice and an opportunity to be heard on the issue of terminating the parties' marital status. As discussed, Husband had ample notice and opportunity to be heard on the question.

B. *Section 2333 Authorized the Court to Order the Marriage Dissolved*

Husband next argues that the court had no authority to dissolve the marriage *on its own* motion. Again, we disagree. Section 2333 authorizes the court to order the dissolution of a marriage "if from the evidence at the hearing the court finds that there are irreconcilable differences which have caused the irremediable breakdown of the marriage." At the trial on February 6, 2015, Husband and Wife confirmed that irreconcilable differences had arisen in the marriage, and Wife asked the court to dissolve the marriage. Wife also confirmed, and the court implicitly found, that there was no reasonable possibility of reconciliation, which would have required the court to continue

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[3] Husband argues that *former* rule 5.175 of the California Rules of Court, which listed issues a court may bifurcate and try separately from other issues, did not authorize the court to bifurcate and separately try the issue of the parties' marital status from other issues. Husband is apparently unaware that former rule 5.175 was repealed effective January 1, 2013, more than two years before trial commenced on February 6, 2015. (Cal. Rules of Court, vol. I—State, 2016 rev. ed., p. 318.)

ruling on the dissolution matter for not more than 30 days. (§ 2334.) Accordingly, the court properly found, and substantial evidence shows, that irreconcilable differences caused the irremediable breakdown of the marriage. (§ 2333.) Hence, the marriage was properly ordered dissolved pursuant to section 2333.

C. *Husband Has Forfeited Any Claim of Error, and Has Failed to Demonstrate Reversible Error, Based on the Court's Failure to Impose Any Conditions Listed in Section 2337, Subdivision (c) in Ordering the Marriage Dissolved*

Husband also argues that the court erroneously failed to "consider" imposing any of the conditions listed in section 2337, subdivision (c), when the court ordered the parties' marriage dissolved. Here, we find no prejudicial error.

Subdivision (c) of section 2337 lists several "conditions" the court "may impose upon a party . . . on granting a severance of the issue of the dissolution of the status of the marriage." The conditions are designed to protect the interests of a party pending the entry of a judgment adjudicating all of the remaining issues in the action, and in some instances thereafter. (See § 2337, subd. (c)(1)-(10).)

For example, the court may require one party to indemnify and hold the other party harmless from any taxes payable by the other party in connection with the division of the community estate, if the taxes would not have been payable if the parties were married at the time the division was made. (§ 2337, subd. (c)(1).) As another condition, the court may require one party to maintain existing health and medical insurance coverage for the other party and any minor children named as dependents, so long as the

party is eligible to do so. (§ 2337, subd. (c)(2); see also *id.*, subd. (c)(3) [concerning right to probate homestead]; *id.*, subd. (c)(4) [right to probate family allowance as surviving spouse]; *id.*, subd. (c)(5) [retirement, survivor, or deferred compensation benefits]; *id.*, subd. (c)(6) [social security benefits]; *id.*, subd. (c)(7) [nonprobate beneficiary designations]; *id.*, subd. (c)(8) [community interest in IRA account]; *id.*, subd. (c)(9) [security interest for postmortem enforcement of community property rights].) A "catchall" provision, section 2337, subdivision (c)(10), allows the court to impose "[a]ny other condition the court determines is just and equitable."

Husband has forfeited his claim that the court erred in failing to impose any of the conditions listed in the statute, because he did not ask the court to impose any of the conditions in connection with ordering the marriage dissolved. (See generally *A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1289, quoting *People v. Partida* (2005) 37 Cal.4th 428, 435 ["A party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct."].)

Nor does Husband claim he was prejudiced by the court's failure to impose any of the conditions. For this reason, Husband has not demonstrated reversible error based on the failure to impose any of the conditions. (Code Civ. Proc., § 475; *In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56 ["[T]he presumption in the California Constitution is that '. . . any error as to any matter of procedure,' is subject to harmless error analysis and must have resulted in a 'miscarriage of justice' in order for the judgment to be set aside."].)

D. *The Judgment Is Not Void*

Lastly, we reject Husband's claim that the judgment is void. By virtue of Husband's petition for dissolution, the court had subject matter jurisdiction over the matter of the parties' marital status and its dissolution. (§ 2010 [in dissolution proceeding, court has jurisdiction to render any judgment and make any orders that are appropriate concerning the status of the marriage, among other matters]; *People v. Nelms* (2008) 165 Cal.App.4th 1465, 1472 ["'A judgment is void rather than voidable only if the trial court lacked subject matter jurisdiction.'"].) Additionally, defendant has not shown that the court erred in any respect in ordering the parties' marriage dissolved.

IV. DISPOSITION

The March 23, 2015 judgment dissolving the parties' marriage is affirmed. Wife shall recover her costs on appeal. (Cal. Rules of Court, rule 8.278.)

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.